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**THIS DISPOSITION
IS NOT CITABLE AS PRECEDENT
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Paper No. 12
CEW

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Sony Electronics, Inc.

Serial No. 75/628,281

Robert B.G. Horowitz of Cooper & Dunham for applicant.

Rebecca Gilbert, Trademark Examining Attorney, Law Office
113 (Odette Bonnet, Managing Attorney).

Before Seeherman, Walters and Wendel, Administrative
Trademark Judges.

Opinion by Walters, Administrative Trademark Judge:

Sony Electronics, Inc. has filed a trademark application to register the mark ERGO-ANGLE for "multimedia liquid crystal display."¹ This product is, essentially, a computer monitor that has multimedia capabilities.

The Trademark Examining Attorney has finally refused registration, under Section 2(e)(1) of the Trademark Act, 15 U.S.C. 1052(e)(1), on the ground that applicant's mark is merely descriptive of its goods.

¹ Serial No. 75/628,281, in International Class 9, filed January 27, 1999, based on an allegation of a bona fide intention to use the mark in commerce.

Applicant has appealed. Both applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested. We affirm the refusal to register.

The Examining Attorney contends that the mark is merely descriptive because "ergo" is "a recognized shortening of 'ergonomic'"; that "a design feature of [computer] hardware is whether or not the hardware can be held at the correct ergonomic angle"; and that "ergonomic angle" means "a design factor intended to maximize productivity by minimizing operator fatigue and discomfort using the place, position, or direction from which an object is presented to view."

In support of her position, the Examining Attorney submitted copies of dictionary definitions of "ergonomics" as "the applied science of equipment design, as for the workplace, intended to maximize productivity by reducing operator fatigue and discomfort" and of "angle" as "the place, position, or direction from which an object is presented to view."² Additionally, the Examining Attorney submitted excerpts of several articles from the LEXIS/NEXIS database and excerpts from several different web sites, including an excerpt from applicant's web site.

Applicant contends that its mark is suggestive; that there is no evidence in the record that the public understands "ergo" to mean "ergonomics"; that there is no

evidence in the record showing use of the term ERGO-ANGLE by any third party; and that the Examining Attorney's evidence does not support her conclusion that the mark is merely descriptive in connection with applicant's identified goods. In support of its position, applicant submitted a dictionary definition of "ergo" as "because of ... therefore, hence"³; and copies of third-party registrations for marks including the word or syllable "ergo."⁴

The nine NEXIS excerpts submitted by the Examining Attorney discuss workplace ergonomics. Following are several excerpts wherein the term "ergo" is used to mean "ergonomic" (bold print added):

In *The Seattle Times*, December 2, 1998, an article entitled "A Chair that Fits - Slumping Sitters Invest in **Ergonomic** Chairs to Cushion Back Pain" states -- "So what can you expect to pay for an **ergo** chair? While some discount warehouse stores may carry **ergonomic** chairs ..."

In *The Gazette (Colorado Springs)*, June 22, 1998, an article entitled "**Ergonomics** Goes Beyond Wrist Rests" states - "You can get a wrist pad for every PC in your office ... or get **ergonomic** keyboards **Ergo** keyboards angle the keys so your wrist is

² The American Heritage Dictionary of the English Language (3rd ed. 1992).

³ Webster's Ninth New Collegiate Dictionary (1988).

⁴ The Examining Attorney objected to this evidence as untimely because it is attached to applicant's brief. However, applicant indicates in its brief that this evidence was attached to its request for reconsideration; the evidence is referenced in its request for reconsideration; and, although the evidence is not in the record attached to applicant's request for reconsideration, the Examining Attorney did not state in her denial of the request for reconsideration that the evidence had not been included. Therefore, we have considered this evidence.

flat ... These devices don't do any good if the user intentionally defeats the **ergo** features, of course."

In *Workbench*, October 1997, an article entitled "**Ergonomic** Tools; Hand and Power Tools" states - "Can **ergonomically** designed tools save you from the pain of cumulative trauma disorders? ... Remember that there is no true '**ergo** tool' as such."

In the *Roanoke Times & World News*, May 8, 1997, an article entitled "Keep Seat, Keyboard and Computer Screen Low for Comfort" states - "The real experts in **ergonomics** are at Virginia Tech, Karl Kroemer told us after this column recently sent readers to an **ergo** page at the University of California, San Francisco."

In two of the excerpts there is a reference to the ergonomics of computer screens, *i.e.*, in discussing how to properly sit in a chair, one article advises "balance your angle of view to the computer screen so you can keep your neck straight" (*Fort Worth Star-Telegram*, November 23, 1998); and in discussing where to place a computer display screen, another article advises that "[t]he display screen should be directly behind the keyboard ... [t]his has to do with the natural angle of the line of sight automatically chosen by the human eye"

The majority of the Examining Attorney's excerpts from various web sites discuss ergonomics in the context of computers, computer hardware, and computer work stations, and include references to proper ergonomic angles.⁵ One

⁵ We do not consider the excerpts from web sites unrelated to computers, computer hardware or workstations to be relevant.

site, *Gaylord.com*, accessed March 2, 2000, states that its Grolen Vu-Mizer computer work station is "[s]pecifically designed to place the monitor at the most ergonomic angle (0° - 60° below the horizontal) [which is] particularly beneficial for people with bifocals"; and that "[d]esigned for viewing comfort, the downward monitor angle protects against stress to the neck and minimizes eye strain."

On its web site, applicant includes the statement that its ERGO-ANGLE Multimedia LCD Display features an "[e]xclusive dual-hinge pedestal [that] provides twice the flexibility of other LCD displays - so you get the per (*sic*) viewing angle every time."

The test for determining whether a mark is merely descriptive is whether the involved term immediately conveys information concerning a quality, characteristic, function, ingredient, attribute or feature of the product or service in connection with which it is used, or intended to be used. *In re Engineering Systems Corp.*, 2 USPQ2d 1075 (TTAB 1986); *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979). It is not necessary, in order to find a mark merely descriptive, that the mark describe each feature of the goods or services, only that it describe a single, significant quality, feature, etc. *In re Venture Lending Associates*, 226 USPQ 285 (TTAB 1985). Further, it is well-established that the determination of mere descriptiveness must be made

not in the abstract or on the basis of guesswork, but in relation to the goods or services for which registration is sought, the context in which the mark is used, and the impact that it is likely to make on the average purchaser of such goods or services. *In re Recovery*, 196 USPQ 830 (TTAB 1977).

We conclude that the evidence establishes that "ergonomic angle" is merely descriptive in connection with computer hardware and computer workstations. From the evidence of record, it is clear that "ergonomic angle" in connection with a computer monitor exactly describes a significant feature of the monitor, namely, that it is designed to permit adjustment of the screen to minimize viewer discomfort and fatigue.

We also find that the record establishes that "ergo" has been used in the news media as a short-hand term for "ergonomic" and, thus, the public has been sufficiently exposed to this use of "ergo" so that the public will understand it to mean "ergonomic" in the context of furniture and computer hardware design. We are not convinced otherwise by applicant's definition of "ergo" because we must consider the meaning of the term in the context of the identified goods, as we stated above. Further, the lack of a dictionary definition of "ergo" as "ergonomics" in the relevant context is not conclusive,

particularly in applicant's 1988 dictionary. We take judicial notice of the fact that the 1985 edition of *The American Heritage Dictionary* (2nd ed.) does not even contain an entry for "ergonomics," which is a fairly new term, at least in the general usage lexicon.

In conclusion, we find that applicant's mark, ERGO-ANGLE, when considered in connection with the identified goods, immediately describes, without conjecture or speculation, a significant feature or function of applicant's goods, namely, that applicant's goods are designed to permit adjustment of the computer monitor screen to minimize viewer discomfort and fatigue. No exercise of imagination, cogitation, mental processing or gathering of further information is required for purchasers of and prospective customers of applicant's goods to readily perceive the merely descriptive significance of the term ERGO-ANGLE as it pertains to applicant's identified goods.

We are not persuaded otherwise by the third-party registrations submitted by applicant of marks including the term "ergo." Of the twelve registrations, one is on the Principal Register with a disclaimer of "ergo"⁶; one is on the Principal Register and consists solely of the term "ergo"⁷; two are on the Supplemental Register with a

⁶ Registration No. 2,301,868 for the mark ERGO KNEEL.

⁷ Registration No. 2,287,007.

disclaimer of the other term⁸; five are on the Principal Register with disclaimers of the other term⁹; three are single, unitary word marks of which "ergo" is a portion¹⁰; and two are on the Principal Register for two-word marks without disclaimers.¹¹ These registrations may indicate inconsistent practice by the USPTO. However, we cannot reach that conclusion because each case must be decided on its own facts, and we do not have the records of those cases before us. Deciding the case before on its facts, we are led, clearly, to the conclusion stated above, that the mark is merely descriptive in connection with the identified goods.

Decision: The refusal under Section 2(e)(1) of the Act is affirmed.

⁸ Registrations Nos. 2,229,682 and 2,226,826 for, respectively, ERGO GEAR and ERGO GEAR and design.

⁹ Registration No. 2,304,613 for ERGO HEALTH; Registration No. 2,245,050 for ERGO PLANNER; and Registration No. 2,242,158 for ERGO INTERIORS.

¹⁰ Registration No. 2,229,173 for ERGORESEARCH; Registration No. 2,270,645 for ERGOTUBE; and Registration No. 2,233,117 for ERGOPANEL.

¹¹ Registration No. 2,204,420 for ULTRA ERGO; and Registration No. 2,173,323 for ERGO POSTURE.